# Eighteenth Annual Report

TO THE LEGISLATIVE ASSEMBLY

Province of Alberta

# Office of the Ombudsman

FOR THE PERIOD JANUARY 1, 1984 TO DECEMBER 31, 1984

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LEGISLATIVE ASSEMBLY
PROVINCE OF ALBERTA

# Office of the Ombudsman

April 30, 1985

The Honourable Gerard Amerongen, Q.C.
Speaker of the Legislative Assembly
Legislature Building
Edmonton, Alberta

Mr. Speaker:

I have the honour to submit, for the information of the Legislative Assembly, the Annual Report of the Office of the Ombudsman for the year ending December 31, 1984.

Respectfully submitted,

Brian Sawyer,
Ombudsman

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**From the Ombudsman Act**
**Chapter 0-7 RSA 1980**

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2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

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# INTRODUCTORY REMARKS

I am mindful of the honour and responsibility that was conferred on me by the Legislative Assembly when, on September 1, 1984, I was appointed to succeed Dr. Randall Ivany as Ombudsman for the province of Alberta.

As an officer of the Legislature, the Ombudsman is expected to investigate complaints concerning the actions or inactions of the bureaucracy, providing an unbiased check on the manner in which government conducts its dealings with individual citizens. The essence of democracy lies in the accountability of a government to its people. Its administrative arm, the public service, is in turn responsible to the ministers in charge of the various departments. The larger and more complex the bureaucracy grows, the more difficult it becomes to oversee the efficiency of its operation. The Ombudsman provides a mechanism by which the rough edges of that efficiency, however minor, may be pinpointed. The establishment of the office eighteen years ago represented an important step in the evolution of the democratic process in Alberta.

It is significant that the Ombudsman is responsible to the Legislature rather than to the government of the day. This simple fact is fundamental to any consideration about the work of the Ombudsman, for he has no power to force a public official to reconsider or change an administrative decision. However, when faced with an official's unwillingness to reconsider a matter, an Ombudsman who believes an unreasonable or inequitable decision has been made may submit a report to cabinet and then, if he does not consider that sufficient, to the Legislature itself. In other words, a matter may become a public issue by being drawn to the attention of all members of the Legislative Assembly, and it is this authority that strengthens the potential of the office to effect remedial action.

Perhaps the most important requirement of an Ombudsman is that he maintain his independence and impartiality. The Ombudsman Act grants the Ombudsman considerable authority and independence both as to what he may choose to investigate and as to how any given investigation will be carried out. I believe Albertans can look back with satisfaction and appreciation at the record established over ten years by Dr. Ivany and for seven years before that by Alberta's first Ombudsman, the late Dr. George B. McClellan.

When Dr. McClellan established the office in 1967, he laid the groundwork for all that was to follow. He was, in a true sense, charting new waters, for Alberta was the first jurisdiction in North America to appoint an Ombudsman. In retrospect, one of the key tasks of that early period was to define for cabinet ministers, senior public officials and Albertans in general just what the office could or could not do. This Dr. McClellan accomplished over time by experience, by consultation, and, on one occasion, by applying to the Supreme Court of Alberta for a declaratory order to determine jurisdiction.

By the time of Dr. Ivany's appointment in 1974, the issue of jurisdiction had largely been settled and the focus shifted towards clarification of the Ombudsman's role as an investigator of special issues. Dr. Ivany initiated several inquiries into events of broad public interest, and his resulting reports, detailed and far-ranging, did much to enhance public awareness of the office. The most recent of these special investigations was completed by Dr. Ivany shortly before the end of his term in office. The complaint of the Lubicon Indian band was the subject of the only special report prepared by this office during 1984, and the report was released publicly in August.

Dr. Ivany was also instrumental in promoting Ombudsmanship in other parts of the world. The International Ombudsman Institute, with its world headquarters at the University of Alberta in Edmonton, is solid

tribute to his efforts to promote the interests and well-being of citizens unfairly affected by bureaucratic inefficiency or insensitivity.

While it is rather early for me to predict what my priorities will be, some ideas are beginning to take shape. For one thing, it is my perception that relatively few Albertans are aware of the existence of the Ombudsman's office and of what it can or cannot accomplish. Although one immediately thinks of an advertising campaign as a possible remedy, I am uncomfortable with that option. Not only might it appear that we were trying to drum up business, but it might enourage petty or wrongly motivated complaints.

I also do not think routine news releases are the answer, for at least two reasons. First, section 19 of the Ombudsman Act requires that my staff and I maintain secrecy about the work we do except to the extent necessary to further an investigation or to file a report. It is true that sometimes complainants will go to the media on their own or an issue will be publicized by sources outside my office. Although I may sometimes respond under these circumstances, in the normal course of events I must refrain from commenting publicly about complaints that come to my attention or about investigations that I am conducting.

A second constraint, while not legislated, is equally compelling. I sense that public discussion of a case under investigation would tend to be counterproductive to the maintenance of a smooth relationship between my office and the provincial bureaucracy. While I neither wish to curry favour nor have any intention of doing so, it seems to me only practical to recognize that the media regularly second-guesses public officials, frequently under circumstances where the latter are prevented from presenting the other side of a story. The result is a very real temptation for bureaucrats to develop a defensive posture on any issue where criticism may result. Under such circumstances, willingness to make an objective re-evaluation of a position is often lessened.

I believe public officials are most likely to respond positively to my recommendations on behalf of complainants if a spirit of cooperation is fostered. My fundamental responsibility is the resolution of complaints, not reform of the bureaucracy. While it is rewarding to see a government department or agency change its policies or procedures in a way that improves service to the public, my primary focus must be the specific concern of the individual complainant. Undoubtedly there will be times when media discussion of an ongoing investigation is inevitable. For the most part, however, I will try to be a quiet broker, acting behind the scenes, and always with the ultimate interests of the complainant in mind.

I sometimes wish there was some way to let people know about all of the cases in which we have been able to provide assistance to complainants. Merely to indicate that we have been able to help on more than a hundred occasions during the past year or to publish selected case summaries such as those contained later in this report is to miss somehow the human element that so often results from the successful resolution of a complaint. On the other hand, my staff and I gain considerable personal satisfaction as a result of being able to help, and that feeling is gratifying.

In examining ways to ensure that potential complainants know about the Office of the Ombudsman and how it can be of assistance to them, I am considering several options. One is the possibility of circulating a newsletter or column that not only explains the operation of the office but also provides examples of the kinds of complaints that we can or cannot investigate. I propose to contact various print media outlets in the province, particularly those in the smaller centres, to see if they would be interested in publishing this information on a regular basis.

This approach might also be used to reach the various minority communities in the province. Alberta is becoming an increasingly multicultural society, and I wish to ensure that any message we transmit to mainstream Alberta is also communicated to minorities such as natives, immigrants and the disabled. In short, I intend the existence and function of our office

to be known by as many Albertans as we are capable of reaching.

I am concerned by the relative dearth of complaints we receive from individuals in the native and Metis communities. Here again, lack of awareness may be at the root of the problem, and so I have decided that, in addition to making our presence known by way of information in newspapers and pamphlets circulated in these communities, I shall examine the possibility of filling one or more vacancies in my office with qualified individuals from the minority communities themselves.

I also hope to improve our ability to offer useful advice to those who come to us with a problem that is non-jurisdictional. The term "non-jurisdictional" is used in reference to two types of complaints. It may indicate a problem involving a federal government department, a municipality or, indeed, a private firm. I am required to confine my investigations to those complaints involving provincial departments, boards or agencies and to decline the rest. The second group of non-jurisdictional complaints is those made against the provincial bureaucracy when there already exists within the department a means of redress that the complainant has not explored. The Act requires all existing avenues of appeal to have been exhausted before my office can intervene.

Because of the dramatic growth of government at all levels over the past twenty-five years, there now exists a bewildering array of appeal mechanisms in the departments, boards and agencies that endeavour to serve the public, and citizens who wish to voice a complaint frequently have no idea which way to turn. My office already puts considerable effort into helping people find their way through this maze of appeals, but I consider it important that we become even more efficient in directing complainants to the appropriate source of potential resolution. This means constantly updating our knowledge of the rules, regulations and services at all levels of government.

A word about annual reports. While I firmly believe that expanded yet restrained publicity is desirable if the office is to serve Albertans well, I do not consider an annual report such as this of great consequence in achieving that end. Relatively few people have access to annual reports, and many of those that do have little time to read them.

Yet an annual report is an important document that can accomplish several objectives. First, there is the legal requirement for a report. As an officer of the Legislative Assembly, the Ombudsman must table with the Legislature the results of his activities each year. In doing so, he is provided with an opportunity, by summarizing cases that have raised significant issues, to highlight potential problem areas in the service being performed for Albertans by their governmental bureaucracy.

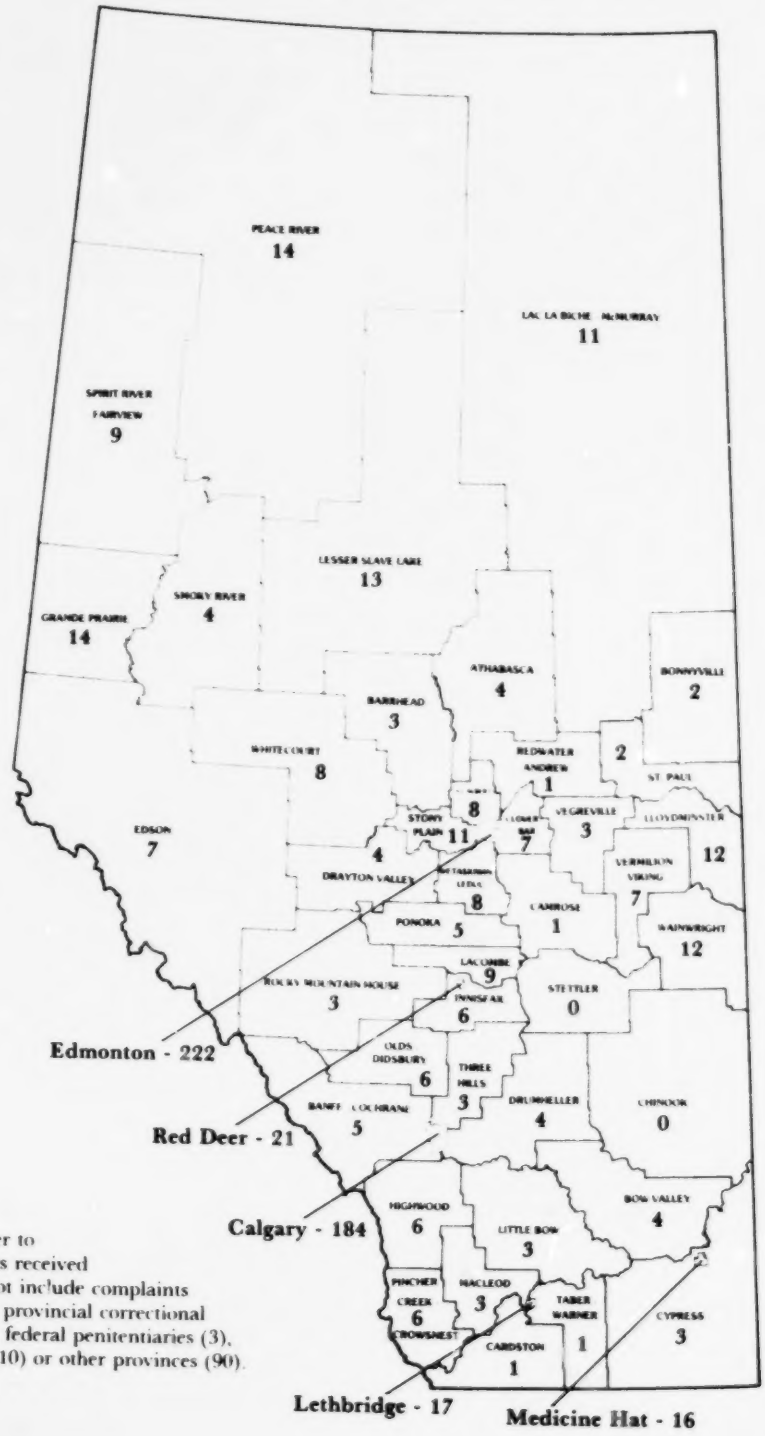
Secondly, the report is an accounting of stewardship of the office over a fixed period of time—in this case the calendar year 1984. It thus becomes an historical report that, in the not too distant future, will be almost the only source of information about this stage of the office's operation.

In addition, such a report is a potentially useful document for scholarly research, especially insofar as it contains the statistical information that provides a basis for the detailed analysis that seems to be a significant component of any academic assessment today.

Last but by no means least, the preparation of an annual report enables an Ombudsman, and particularly one such as the writer who is new to the post, to outline his plans for the future.

And so I am pleased to submit this, the eighteenth annual report, and my first, covering the operation of the office of the Ombudsman for the calendar year 1984.

# GEOGRAPHICAL ORIGIN OF COMPLAINTS




These figures refer to written complaints received in 1984 and do not include complaints that originated in provincial correctional institutions (190), federal penitentiaries (3), mental hospitals (10) or other provinces (90).

## SOME FACTS AND FIGURES

During 1984 we received almost 1,600 oral complaints, most of them by telephone. Many dealt with issues that were non-jurisdictional because they concerned the federal or a municipal government or were directed at private companies or individuals. Others were against provincial bodies excluded from our purview, such as hospitals and universities, or else were open to other avenues of appeal that had not been explored. In the latter instance we advised callers of appropriate remedies and how to pursue them. When a complaint was within our jurisdiction and appeared to warrant possible investigation, we asked the caller to put it in writing, as required by the Ombudsman Act.

Of the 986 written complaints received during the year, one-quarter concerned matters outside the scope of the provincial government. Those of the remainder that could be appealed elsewhere we declined after informing complainants of their options. Some complaints were resolved informally by a telephone call. A few were so minor that intervention was not warranted. The remaining 411 were accepted for investigation.

**NON-JURISDICTIONAL WRITTEN COMPLAINTS**

| | | | |
|---|---|---|---|
| Hospitals, colleges, universities | 83 | Private matters | 30 |
| Federal and other provincial governments | 41 | Courts of law | 17 |
| Municipalities | 32 | Requests for assistance | 31 |

This year's statistics compare with earlier figures as follows:

| YEAR | TOTAL WRITTEN COMPLAINTS | WITHIN JURISDICTION | ACCEPTED FOR INVESTIGATION | ASSISTANCE PROVIDED |
|---|---|---|---|---|
| 1984 | 986 | 752 | 411 | 113 |
| 1983 | 1025 | 832 | 428 | 130 |
| 1982 | 981 | 732 | 447 | 154 |
| 1981 | 834 | 634 | 300 | 113 |
| 1980 | 783 | 565 | 321 | 107 |
| 1974 | 933 | 628 | 320 | 93 |

The investigative process is sometimes lengthy, and there is always a carry-over from one year to the next. We started the year with 138 complaints carried over from 1983 and ended with 135 remaining in the process of investigation.

In 1984 the office had an authorized personnel strength of eighteen, consisting of the Ombudsman, an executive assistant, an administrator, two solicitors, a complaints analyst, five investigators, one clerk and six secretaries/stenographers. One investigator, one solicitor and two secretaries/stenographers staffed the satellite office in Calgary. The remainder worked out of the main office in Edmonton.

The authorized budget for the fiscal year ended March 31, 1985, consisted of $697,358

for manpower and $165,800 for supplies, for a total of $863,158.

Those who require a more detailed breakdown of the year's statistics are encouraged to call us at (403) 427-2756 or write to us at 1630 Phipps-McKinnon Building, 10020 - 101A Avenue, Edmonton, Alberta T5J 3G2.

## CASE SUMMARIES AND DEPARTMENTAL STATISTICS

The following cases have been chosen to illustrate the type and scope of complaints filed against various departments. In keeping with the requirement of confidentiality, the identities of complainants remain anonymous.

No complaints were received against either the Department of Economic Development or the Department of Federal and Intergovernmental Affairs in 1984.

### DEPARTMENT OF ADVANCED EDUCATION

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Advanced Education | 0 | 0 | 0 | 4 | 4 |
| Students Finance Board | 1 | 5 | 0 | 2 | 8 |
| **Total Advanced Education** | **1** | **5** | **0** | **6** | **12** |

Although no complaints against the department itself were sustained, the majority of complaints against the Students Finance Board, which comes under the departmental umbrella and oversees the dispensation of student loans, were supported.

**Case summary 1**

*The Ombudsman may not investigate any complaint for which another route of appeal remains unexplored. Because we are obliged to decline so many investigations for this reason, my staff endeavours to familiarize itself with the various levels of appeal and to refer complainants to the appropriate official or agency.*

#### English a difficult prerequisite

An immigrant to Alberta from Hong Kong complained that he had been unfairly treated by the Alberta Vocational Institute with respect to a course application. A physician of eight years' standing in his native country, he had spent three years at AVC upgrading his English to the grade 10 level to satisfy the prerequisites for the Registered Nursing Assistant program. He then submitted his application, but had received no response by the time the course started three months later. He was then asked to undergo a further reading test, the results of which placed him back at the grade 5 level. He claimed that he had already fulfilled the English requirements for application to the course, and that at any rate he should have been informed about the status of his application.

At the commencement of our investigation we learned that a letter had just been sent to the complainant informing him of his acceptance into a second RNA program starting three months later. Although the program was heavily oversubscribed, AVC had decided to admit the complainant in spite of doubts about his competence in English.

I concluded that the complainant had been premature in approaching this office for assistance. He had not raised his concerns with his counsellor or any official at AVC or availed himself of the appeal procedure provided by the institution. We advised him of the appropriate avenues to follow should he wish to pursue his complaint further.

**Case summary 2**

*Procrastination on the part of the public service is probably the greatest single source of frustration*

*encountered by people who seek the help of our office. However, some complainants are just as adept at it as the bureaucrats they criticize.*

### Delays by everybody concerned

The complainant received a Canada Student Loan in 1980 and paid it off by December 1981. The terms of the loan provided for a guaranteed remission of $400 from the Students Finance Board on repayment of the loaned amount. The complainant had received no replies from either the board or his bank to his correspondence about the remission, and he sought help from our office.

Our investigation showed that the board had asked the complainant to apply for remission in 1980, and when he had failed to do so the board eventually had placed his file in the inactive category. When the loan was repaid in 1981, the bank warned the complainant that the remission payment could take two years to process, and asked him to "please be aware that this delay is caused by the government and not by the bank". A couple of years later he contacted the board and his file was reactivated, but the board told him it could do nothing until the bank provided the board with confirmation of the loan repayment. Many more weeks went by, eventually the bank provided the confirmation, and finally the board responded with a remission cheque.

We concluded that although there had been unusual delay in processing the remission, much of the fault lay with the complainant for not applying for the remission at the time the loan was paid out and with the bank for not being more expeditious in confirming repayment of the loan.

## DEPARTMENT OF AGRICULTURE

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Agriculture | 5 | 0 | 0 | 2 | 7 |
| Agricultural Development Corporation | 0 | 1 | 1 | 7 | 9 |
| **Total Agriculture** | **5** | **1** | **1** | **9** | **16** |

The number of complaints against the Agricultural Development Corporation has been growing every year since 1982. The increase appears to be directly related to the economic downturn and the corresponding adverse effect on farming in Alberta. The majority of complaints against the corporation are brought when complainants have defaulted on their loans and are facing actions to salvage the moneys loaned to them by the ADC. Others, such as the following complaint, ensue when a farmer thinks his loan application has been wrongly refused.

**Case summary 3**

*Evidence of inadequate administrative procedures may not be sufficient grounds to overturn a decision that adversely affects a complainant if it is shown that the decision has been based on relevant information and made in an unbiased manner.*

### Loan on the range

The complainants were ranch owners who applied to the Agricultural Development Corporation for a $2.5 million loan to expand their operations. They decided their loans officer was being unnecessarily slow and contacted their MLA to see if he could speed up the process. When the loan was subsequently denied by the ADC board of directors, the complainants charged that the Assistant Regional Manager who processed the loan had accused them of "political interference" after they had gone to their MLA and had refused them the loan because he was biased.

On appeal, the local Agricultural Development Committee upheld the original decision but suggested that the complainants reapply with additional information. The complainants demanded a new loans officer. Their request was granted, but the new officer compounded the complainants' distress by inadvertently leaving at their ranch the ADC files containing the information pertaining to the application. As the complainants pored over the loan officer's opinion of their original application, they became convinced they were victims of a hatchet job. They argued that the financial state of their operation had been misrepresented and that the loans officer's report had been partial and misleading. A special committee appointed by the ADC board reviewed the case again and upheld the decision that the ranch operation was not sufficiently viable to be eligible for a loan.

On investigation, my assistant found evidence of delay in the processing of the complainants' loan application and judged several administrative procedures employed by the ADC to be inadequate. On balance, however, I determined that the loans officer's opinion of the merits of the complainants' application was realistic, based on the information available to him, and had not been influenced by bias. I therefore judged it inappropriate to recommend remedial action on behalf of the complainants; however, I was pleased to note that the ADC recognized the inadequacies of several of its administrative procedures and instituted improvements.

## DEPARTMENT OF THE ATTORNEY GENERAL

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Attorney General | 18 | 5 | 0 | 6 | 29 |
| Public Utilities Board | 1 | 0 | 0 | 1 | 2 |
| Crimes Compensation Board | 1 | 1 | 0 | 0 | 2 |
| Public Trustee | 2 | 0 | 0 | 7 | 9 |
| **Total Attorney General** | **22** | **6** | **0** | **14** | **42** |

During the past year complaints were received involving various proceedings before the courts, including the ultimate court order. Other complaints dealt with the bail process, actions taken by a sheriff's office, private land transactions and the process at the Land Titles Office. Investigations such as the one in Case Summary 5 require an examination of court precedents and applicable legal texts. In some cases both the department and my office obtain the advice of lawyers in private practice. One legal confrontation concerned my jurisdiction to investigate complaints about the role of the Amicus Curiae, a division of the department involved in private child custody disputes before the courts. After careful delibertation we concluded such an investigation would be inappropriate in view of the long-standing tradition based on section 12(1)(b) of the Ombudsman Act, which precludes the Ombudsman from investigating any decision, recommendation, act or omission of any person acting as a lawyer for the Crown in relation to any court proceedings.

**Case summary 4**

### Charity and the Gaming Commission

A day-care association that provided after-school care for children of its working members complained to my office after being denied a permit to hold a raffle to raise $500 to buy furniture for its premises. The application had gone before the Alberta Gaming Commission

for a determination of whether or not the group was a charitable organization, as required by the Criminal Code of Canada. Although the association was registered as a charitable organization under federal income tax legislation, the commission ruled that its activities primarily benefited the interests of its members rather than being for the good of the community at large, and that any equipment should therefore be paid for by them. Its decision was based in part on commission policy that no organization whose directors receive a benefit from its services qualifies to be deemed a charitable organization.

It appeared to me that the day-care association's application met the eligibility guidelines circulated for public information by the Gaming Commission, and without success we urged first the commission and then the Attorney General to have the ruling altered. The Attorney General said that the classification of the day-care association as charitable or otherwise was solely within the purview of the Gaming Commission, and that it would be inappropriate for him to interfere or even to comment on the merit of the application. The Gaming Commission insisted that it had made the correct decision based on the available information and that its decision had been consistent with others it had made with respect to the eligibility of charitable organizations and the charitable use of funds.

Although the complaint appeared to have merit, there was no possiblility of providing assistance to the complainant. The file was closed as unresolved.

**Case summary 5**

### Gas company error expensive for farmer

A natural gas company billed the owner of a small family farm $7,000 to correct errors in meter readings conducted by the company over a period of more than six years. The errors resulted from an incorrect pressure factor measuring system. The complainant and several other customers who were being billed retroactively appealed to the Public Utilities Board, which conducted an investigation of American and Canadian case law relating to utility companies. The board's counsel determined that a utility company has the right and duty to collect the proper rate from its customers regardless of negligence on the part of the company. However, it was agreed that a customer had no obligation to pay for any amount extending beyond the six-year Statute of Limitations period. Once the board had satisfied itself that the company was charging rates approved by the board and was treating all its customers equally—in this case by collecting over $200,000 in underbillings—it determined that it had no authority to challenge the company's decision to collect its lost revenues.

The farmer appealed the board's decision to our office. He said it didn't seem fair that a utilities company should have legislative protection from its own mistakes when a small farmer who underbilled his feedlot customers could hardly expect the same kind of break. While I informed him I had no authority to investigate a private firm such as the utility company, I opened an investigation because of my jurisdiction regarding the administrative role carried out by the Public Utilities Board. My investigative staff examined the board files relating to the utilities company and determined that the board's investigation of the facts and the law had been thorough and its decision reasonable based on its findings, and I was unable to support the complaint.

**Case summary 6**

### Investments by the Public Trustee

Five years after the complainant became an adoptive father, he was advised by the Public Trustee that he had the option to authorize the investment of funds being held in trust for his adopted daughter in a guaranteed investment certificate instead of in the common fund established pursuant to the Public Trustee Act, where they were currently earning 9.5 percent. The complainant said that had he been informed of his choice at an earlier time, when interest rates were more favourable, he could have secured a long-term investment returning interest in the 20 percent range. Charging that

there had been maladministration of funds, he demanded that the Public Trustee accept responsibility for its oversight and guarantee a return approaching 20 percent on the funds. When he had received no response to this request after waiting for four months, he complained to us.

Our investigation showed that since the funds transferred to the account of the minor beneficiary were not held in cash but were already invested in the common fund, it would not have been possible for the Public Trustee to have invested the funds in specific investments without liquidating securities in the common fund at a loss which would have resulted in an unacceptable reduction in the capital of the common fund. It was only as a result of a decline in interest rates in 1982 and 1983 that it became possible to liquidate such investments without incurring capital losses, and it had been this change that prompted the Public Trustee's office to contact the complainant informing him of his option. It was clear to me that the Public Trustee had acted in the best interests of the infant beneficiary's account in consideration of the existing financial climate and in accordance with the provisions of the Public Trustee Act.

## DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Consumer and Corporate Affairs** | **5** | **0** | **0** | **6** | **11** |

Considering the diversity of the areas covered by this department, the number of complaints received against it were minimal. A reasonable number of telephoned complaints were fielded; however, very few of these were followed by the obligatory letter of complaint.

## DEPARTMENT OF CULTURE

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Culture** | **1** | **0** | **0** | **2** | **3** |

**Case summary 7**

### Novel argument from a writer

A writer with several novels and short story collections to his credit complained that the Film and Literary Arts Branch had improperly rejected his application for a senior author's grant. The branch appoints a jury of authors to meet in the spring and fall to assess applications and disburse funds. The complainant had applied in the spring for an $11,000 grant to do research for a book in which two major publishers had already expressed interest, but had asked for tax reasons that no money be forwarded to him until the beginning of the following year. In light of his request, the jury deferred his application until its fall meeting. By this time the complainant had moved from the province, and his application was rejected on the basis of non-residency.

The complainant appealed unsuccessfully to the Minister of Culture to overturn the decision of the Film and Literary Arts Branch, and then approached our office for assistance. He argued

that his leaving the province was irrelevant to the jury's consideration of his application, as he had been a resident at the time he applied, and further suggested that the decision had been influenced by professional jealousies.

Our investigation revealed that the jury had had many applications to consider in the spring and only $30,000 to disburse, and on this basis had felt it reasonable to postpone consideration of the complainant's application so that money would be available immediately to authors who needed it. An examination of branch policy made it clear that the grant program was designed to assist authors who had lived in Alberta for over a year and was intended to encourage them to remain in Alberta. As the complainant had asked not to receive the grant until a time when he was no longer going to be a resident of the province, I found that any other decision by the jury would have been contradictory to the purpose of its existence, and therefore I was unable to support the complaint.

## DISASTER SERVICES

The only complaint received against Disaster Services in 1984 was declined as being beyond my jurisdiction.

## DEPARTMENT OF EDUCATION

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Education | 3 | 1 | 0 | 3 | 7 |
| Teachers' Retirement Fund | 0 | 0 | 0 | 2 | 2 |
| **Total Education** | **3** | **1** | **0** | **5** | **9** |

The majority of complaints made about the Department of Education were in areas beyond my jurisdiction. Of more than twenty oral and written complaints handled in 1984, only six resulted in investigations and only one was sustained.

**Case summary 8**

### A very costly train trip

The complainant, a practitioner of acupuncture in eastern Canada, was invited to Edmonton to appear before the Health Occupations Board while it attempted to determine whether acupuncturists should be licensed under the Health Occupations Act. The board subsequently rescheduled the meeting to a date four months later, but unfortunately neglected to inform the complainant, whose train trip across the country in the company of his companion/assistant proved to be for naught.

The board admitted its mistake and offered to reimburse the complainant for air fare, hotel accommodation, meals and income loss to a total of just under $2,000. The complainant insisted that he be reimbursed for the expenses of his companion as well, as her assistance was vital to him, and calculated their combined expenses to be roughly $8,000. The board refused to consider this amount and denied responsibility for any expenses incurred by the second person.

In view of the evidence that the board had not requested the presence of the complainant's companion/assistant, and in light of prevailing train fares at the time, we concluded that the board's offer was fair. The complaint was not sustained.

**Case summary 9**

### Wife divorceable, but not her pension

When he retired the complainant named his wife as the beneficiary of a joint life pension, but he later divorced her and sought to remove her as joint nominee so she wouldn't get the pension in the event of his death. The board of administrators of the Teachers' Retirement Fund turned down his request, stating that the choice of a nominee is unalterable. He complained to us.

The reasoning behind the board's long-standing policy, which is customarily followed by private companies as well, is that actuarial tables are based on a variety of factors that include the ages of the pensioner and joint nominee. Because pension amounts are based on these tables, changes in named recipients could leave the fund vulnerable to adverse selection. Should a 60-year-old be replaced as nominee by a pensioner's 25-year-old new bride, the new beneficiary might be expected to draw a pension for decades longer than had been anticipated when the pension was started.

Because the explanation of the board's policy was considered to be reasonable, we chose not to intervene on behalf of the complainant.

## DEPARTMENT OF ENERGY AND NATURAL RESOURCES

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Energy and Natural Resources | 1 | 0 | 0 | 2 | 3 |
| Public Lands Division | 1 | 5 | 0 | 8 | 14 |
| **Total Energy and Natural Resources** | **2** | **5** | **0** | **10** | **17** |

A steady stream of complaints was received in 1984 involving the Department of Energy and Natural Resources, most of them having to do with the Renewable Resources and Public Lands sections of the department. No common thread to the complaints is evident, although a number came from environmentalists concerned about industrial development and exploration activities threatening the wilderness areas of the Eastern Slopes.

**Case summary 10**

*Although as a rule I will not order an investigation into matters that have lain dormant for over a year, exceptions are sometimes made when unusual circumstances apply.*

### The road that got lost

The complainant bought a rural property in northern Alberta in 1948 and later moved out of the province. In 1966 the Alberta Forestry Service constructed a forestry road through the property without notifying the complainant or offering him any compensation, even though the owners of neighbouring lands were compensated. In 1977 the complainant sought an explanation from the department and was told that any claim he might have had earlier was now barred by the Statute of Limitations, and that in any event the department's records of the road had been "lost in the dim past". The complainant pondered the logic of this excuse for a few years and then approached our office for help in the matter.

The department at first informed us that the road in question had been built on a road allowance and had not infringed upon the complainant's property, but withdrew from this position when our investigator produced a map that showed the road crossing the complainant's land. Some former employees of the department who had been involved were tracked down by our investigator, but none of them could recall why the complainant had not been notified or compensated when the road was built. Eventually the department agreed to rectify its oversight, and met the complainant's demand of $150,000 with a counteroffer of $4,000, which he accepted.

**Case summary 11**

*Frustration with bureaucratic delays occasionally leads upright citizens to bypass the rules in order to get things done. Even when we empathize with their impatience, we are unable to condone breaches of properly constituted regulations.*

### The high price of integrity

The complainants had been issued a surface materials licence by the Department of Energy and Natural Resources that authorized them to remove a fixed quantity of gravel from a Crown-owned pit. When the oil company they were supplying required surplus gravel because of unforeseen muskeg conditions, the complainants removed approximately 1,000 cubic yards more than was authorized by the licence. They reported their action and paid the royalty for the extra amount, but were nevertheless charged with an offence under departmental regulations and fined over $300 for unauthorized removal of gravel. They complained that the department had been unreasonably slow to respond to licence applications in the past, and were upset about paying a penalty for telling the truth when many others helped themselves to Crown material without reporting or paying compensation for it.

Our investigation showed that the department had acted in accordance with the legislation and regulations pertaining to Crown-owned gravel pits. My assistant and a staff member from the Lands Branch met with the complainants, reviewed the legislation and verified their offence. The department maintained that had they telephoned a staff member at the Lands Branch, authority to remove extra material could have been immediately authorized over the phone, thus avoiding the creation of an offence. The complainants' care to make known their breach of regulations, though undoubtedly an honourable action, could not be used to justify their being exempt from the penalty.

**Case summary 12**

*The following case illustrates the unfortunate consequences that can ensue when citizens dealing with the government assume responsibilities on the part of the bureaucracy that are not specifically spelled out.*

### A safe place for a moose

The complainant and a group of his hunting buddies spent over $500 on licences to hunt moose and elk in an area that was designated for seven-day-a-week hunting with all-terrain-vehicle access. When they approached the designated area they found that they couldn't get into it. One road through a provincial campground was closed for improvements, another access road was piled with culverts, and when they tried to use an oil company road they were told to get lost because the company was seeding the road to return it to its natural state. In frustration they attempted to return to their original campsite, only to find that a twelve-foot berm had been bulldozed across the road by a forest company in their absence. After half a day's effort they managed to get around this obstacle, but they never did get to the hunting area where the moose and elk were waiting for them.

In seeking our assistance, the complainant expressed his unhappiness not only that the supposed hunting area was impregnable but also that misleading construction signs erected by the department had led him and his buddies astray. My assistants took the complainant's concerns to the department, but the department was not highly sympathetic. It said that access routes in the area in question were in a constant

state of change because of industrial activities and weather conditions, and stressed that its hunting policy was quite clear: a hunting licence simply provides authority to harvest game, and the onus lies with the hunter to obtain information about access conditions for the area in which he wishes to hunt. However, the department conceded that its signs about construction in the area were not a shining example of clarity, and agreed to attempt to improve them.

## ENERGY RESOURCES CONSERVATION BOARD

Of three complaints registered against the board, two were declined or discontinued and the other was not sustained.

## DEPARTMENT OF THE ENVIRONMENT

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Environment** | 5 | 0 | 0 | 5 | 10 |

The most significant issue evident among complaints directed at this department was the concern of environmentalists about the effects of industrial development in wilderness areas. This is likely to become a subject of increasing attention if industry is permitted to encroach further onto the undeveloped areas of the province.

**Case summary 13**

### Heaven for ducks, doubtful for hay

A farmer complained that a lake on his property was flooding his land and reducing the area available to him for cultivation. He blamed the Water Resources Branch for not putting the collar on his neighbours, who he maintained were illegally ditching and draining their sloughs and potholes to create dry areas for themselves by filling up his lake. He further accused the Department of the Environment of allowing Ducks Unlimited to ditch additional water into his lake, thus making his property look very good to homeless waterfowl but not so desireable as a place to grow hay.

The department said that not only had the complainant had ample opportunity to make known his objection before the Ducks Unlimited project was approved under legislative authority, but that the project ought to benefit the complainant by raising an adjoining slough and thus preventing water from seeping into his lake. My investigator accompanied the complainant on a tour of the land around the lake but were unable to find any evidence of recent ditches, although it was apparent they could have been reintegrated into his neighbours' land in the process of farming. Although one ditch was discovered, the presence of large willow trees growing in the middle of it suggested to my investigator that it had not been freshly contructed. The complainant was assured that the department would take action to prevent infractions of the Water Resources Act should he notify it of illegal ditching at the time of its occurence.

A review of aerial photographs taken over the years demonstrated that the lake had frequently shrunk and grown depending on rainfall patterns, creating further difficulty in isolating the source of the complainant's distress. We were unable to support the complaint, but the complainant was made aware of remedies he could seek in the event of provable future transgressions.

## DEPARTMENT OF HOSPITALS AND MEDICAL CARE

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Hospitals and Medical Care | 0 | 0 | 0 | 2 | 2 |
| Alberta Mental Hospitals | 13 | 1 | 0 | 3 | 17 |
| Health Care Insurance Division | 10 | 8 | 1 | 3 | 22 |
| **Total Hospitals and Medical Care** | **23** | **9** | **1** | **8** | **41** |

The great majority of complaints from patients about their committal to either of Alberta's mental hospitals are declined, generally because complainants have not exhausted the available methods of appeal. The review panels appointed by the Minister of Hospitals and Medical Care for each of the hospitals are constituted to hear and rule on applications by formal patients concerning their involuntary detention. The Mental Health Hospital Boards of each hospital are responsible for the operation of the hospitals and are an appropriate avenue of appeal for any patient or staff member who wishes to register a complaint about matters of hospital operations other than admission or renewal certificates. Only after these routes have been taken can my office accept a complaint for investigation.

Often a complaint concerning the Alberta Health Care Insurance Division is resolved by the actions of the division before our investigation is underway or completed; hence the fairly high number of declined and discontinued cases in our statistics for this division.

**Case summary 14**

### A long-awaited release

A patient in a mental hospital complained that she was being improperly confined and was capable of functioning on her own in society. Her doctor refused to support her request to be discharged, and her appeal to the review panel established under the Mental Health Act had met with no success.

Our investigation revealed that the complainant had been certified over twenty years earlier after being diagnosed as suffering from paranoid schizophrenia. The hospital staff had been attempting to facilitate the complainant's transition to self-reliance through a step-by-step program that involved placement in a work program in the hospital followed by transfer to a sheltered workshop and eventually into a group home in the community. Unfortunately the woman had been unable to adapt to the work program at the sheltered workshop, and the staff found it necessary to return her to an institutional setting with the aim of gradually reintroducing her to a step-by-step program. In the words of the executive director, it was a frustrating process of two steps forward followed by one step back, but he felt optimistic about the possibility of the patient making it through the transitional program in due course.

His explanation appeared reasonable, and the complaint was not sustained.

**Case summary 15**

*Public officials are often disinclined to give citizens the benefit of the doubt when there is a dispute over a regulatory matter. In such instances my staff attempts to gather sufficient information to draw an objective conclusion about the circumstances and to make a recommendation for a solution.*

### Lost in the mail, but no proof

The complainant applied for single coverage with the Alberta Health Care Insurance Division when she reached twenty-one years of age. When she had received no response four months after sending in her application, she made an inquiry and learned that her

application had never been received. She was told that since she had not applied for coverage within ninety days of turning twenty-one she would be penalized and her coverage would not take effect for two months after she submitted another application. As she could provide no proof that she had mailed in her application at the proper time, she was informed that nothing could be done to help her.

As a result of our investigation Alberta Health Care admitted that the fault did not necessarily lie with the complainant, and agreed to revise the date of her registration to be retroactive to her twenty-first birthday, the date she was deleted from inclusion under her parents' registration.

**Case summary 16**

### Reimbursement for medical bills delayed

An Albertan attending university in the United States complained about delays of half a year in being reimbursed for medical costs incurred during his period of residency out of the province. He had maintained his Alberta Health Care Insurance coverage when he left Canada.

The department acknowledged that delays were occurring because of heavy volumes of correspondence and because such claims had to be manually processed. I was assured that several changes in procedures were being implemented to expedite processing and that the complainant's claims were being placed in the final stages of processing.

Six months later the same individual complained to us that he was experiencing a further delay in having his claims honoured. The department apologized and again expedited the processing of his claims. I was advised that the out-of-province claims unit had been faced with a massive backlog as a result of receiving 12,000 to 14,000 claims per month from all over the world. Since there was no standard format for these claims, they had to be manually assessed, as staff were required to translate or convert medical claims, bills or receipts into standard Alberta fee codes that could be processed by the computer system. In an attempt to resolve the delays, the department decided to amalgamate the out-of-province and in-province claims units and to eliminate all non-essential steps in order to streamline the system.

The problems experienced by the complainant were by no means unique, and I trust that the proposed improvements will prove to be effective in minimizing delays in settling claims.

## DEPARTMENT OF HOUSING

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Housing | 0 | 0 | 0 | 1 | 1 |
| Alberta Housing Corporation | 0 | 0 | 0 | 2 | 2 |
| Alberta Home Mortgage Corporation | 4 | 1 | 0 | 0 | 5 |
| Mortgage Interest Relief | 4 | 0 | 0 | 1 | 5 |
| Home Mortgage and Housing | 1 | 0 | 0 | 0 | 1 |
| **Total Housing** | **9** | **1** | **0** | **4** | **14** |

**Case summary 17**

### Mortgage application snafu

The complainants applied to the Alberta Home Mortgage Corporation for a mortgage loan to build their house. Although their loans officer recommended the approval of their loan, they were eventually refused. They alleged that there had been unreasonable delays and repeated confusion regarding the information required of them in the processing of their application, and that they had not been given any clear reason for the denial of their application. In addition, they complained that a representative of the corporation had sworn at one of the complainants after she demanded written reasons from the corporation for the denial of their application.

Our investigation showed that the complainants' allegations were for the most part justified. The corporation explained that they had been refused because their income had been considered to be insufficient. It acknowledged that the matter had been handled in a less than professional manner, although it denied the allegation about profane language, and sent the complainants a written apology.

## DEPARTMENT OF LABOUR

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Labour | 2 | 0 | 2 | 0 | 4 |
| Employment Standards Branch | 5 | 1 | 1 | 3 | 10 |
| Human Rights Commission | 0 | 0 | 0 | 9 | 9 |
| **Total Labour** | **7** | **1** | **3** | **12** | **23** |

Since the economic downturn with its resultant employment problems, complaints against the Employment Standards Branch have come primarily from workers who have lost jobs and are concerned about delays in settling their wage claims. It was apparent that some of the delays were unavoidable because of the branch's heavy workload and that the Employment Standards officers were doing their best to resolve the claims. However, during the course of one investigation I learned that the Employment Standards officers in the Calgary office were carrying workloads of over 100 cases each, whereas the Edmonton regional officers had only a small portion of that number.

It appeared to me that this backlog might be reduced if some of the Edmonton officers were sent to Calgary temporarily to assist with the local caseload. I voiced concern to the director of Employment Standards Branch and corresponded as well with the Deputy Minister of Labour. Approval was given by the Minister of Labour, and as a result three Employment Standards officers were detached to Calgary on a temporary basis.

People approaching my office with complaints against the Human Rights Commission are frequently under the mistaken impression that the Ombudsman can, as a matter of course, overturn an adverse decision by the commission. It is impressed on all persons who approach this office with human rights complaints that inquiries conducted by the Ombudsman are limited to ensuring that an investigation by the commission has been thorough and fair and its decision based on relevant information.

If I am satisfied that the commission has made an unbiased decision in possession of all germane facts in a case, I am unable to support the complaint. Such was the result in each of the following cases, in which the complainants alleged that they had been unable to present

their concerns fully before the commission because of shortage of time in the first case and language difficulties in the second. Although it was found in each case that the commission had acted properly, the Office of the Ombudsman assisted the complainants to be heard again by the commission.

**Case summary 18**

### The unopened letter

A 53-year-old man, fired from his job because of incompetence, claimed that the real reason was his age. He took his case to the Human Rights Commission, which conducted an investigation that upheld the company's argument and concluded that the man's age had not been a factor in his dismissal. The complainant then appealed to our office that he hadn't been given adequate time to present his case before the commission. He cited the fact that at one point the commission had mailed him a letter that requested further information but gave him only a week to provide it. Our investigation revealed that although this had been the case, the complainant hadn't picked up his mail until two weeks after it was delivered. His alleged lack of time to present evidence appeared to have resulted mainly from his own procrastination. Nevertheless, on my recommendation the Human Rights Commission agreed to review the complainant's case once again and to receive further evidence.

**Case summary 19**

### A matter of interpretation

A cancer victim was fired for low productivity and appealed to the Human Rights Commission for redress under the Individual's Rights Protection Act, which prohibits dismissal of an employee because of physical characteristics. When the commission dismissed the case after investigation, the man complained to us that it had erred in not providing him with an interpreter. The commission's investigating officer explained that she had no difficulty understanding the complainant and had not considered it necessary to seek the services of an interpreter. As there was a Human Rights officer in another city who spoke the same language as the complainant, I suggested that she be called upon to interview him, and the director of the Human Rights Commission concurred. As in the previous case, no fault was found with the commission's handling of the complaint, and as the remedy sought was readily available, the file was closed.

## DEPARTMENT OF MANPOWER

None of the four complaints against the Department of Manpower was sustained.

**Case summary 20**

### Not an employee, but a boss

A self-employed oil driller enrolled in two courses offered by the Petroleum Industry Training Service, at a cost exceeding $1,000, in order to acquire a certificate he needed for employment in Canada. He learned that other students in the courses were reimbursed for their tuition by the Priority Employment Program, but when he made application for similar treatment he was turned down. He complained to us.

Our investigation showed that PEP's guidelines clearly specified that funds were to be provided to employers to cover the costs of training existing full-time staff. As the complainant was categorized as an employer rather than an employee he was not considered eligible for financial assistance. I was unable to support his complaint.

## DEPARTMENT OF MUNICIPAL AFFAIRS

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Municipal Affairs | 2 | 3 | 0 | 4 | 9 |
| Assessment Appeal Board | 1 | 0 | 0 | 1 | 2 |
| Alberta Planning Board | 0 | 0 | 0 | 1 | 1 |
| **Total Municipal Affairs** | **3** | **3** | **0** | **6** | **12** |

My office continues to receive a number of complaints pertaining to the Improvement District Operations Division of the Department of Municipal Affairs. Cooperation from the division has generally been excellent, and a number of problems have been resolved to the satisfaction of complainants.

A slight increase in the number of complaints against the Alberta Assessment Appeal Board appears to be related to the economic downturn. Most such complaints originate as a result of disagreements over municipal taxation, an area over which I lack jurisdiction.

**Case summary 21**

### Dry well dampens lawn plans

A couple living in a small village in an improvement district in the Palliser Triangle drilled a 90-foot well to obtain a water supply. Later the improvement district decided to drill an irrigation well in a community park adjoining their property. Soon after the well in the park began operating, the couple's well went dry. The same thing happened the following year when the park opened up for the spring. They were particularly irate over the fact that it had taken them three years to cultivate a decent lawn, and now they had to sit and watch it turn brown. Finally they resorted to deepening their well to 190 feet, at a cost of approximately $2,700.

Certain that the well in the community park had been tapped into the same stream and was the source of their troubles, the couple asked the Improvement District Advisory Council to help pay for the cost of the extra drilling of their well. The council refused.

Shortly after the couple appealed the council's decision to my office, the Department of the Environment ordered the community park well to be shut off, as the improvement district had neglected to apply for a licence to drill the well or conduct a survey of nearby wells that might be affected. Immediately after the well was closed neighbours of the complainants whose well had also gone dry suddenly found water in their well.

However, the Improvement District Advisory Council remained adamant that it owed the complainants no compensation. It claimed that their well had gone dry because of drought conditions, which were the worst in sixy-five years in that part of the province. It pointed out that it was normal for wells in close proximity to be affected by one another, and expressed concern that paying compensation to the complainants would leave it open to any number of similar claims. The Department of Municipal Affairs informed us that, as the advisory council had given the matter "a great deal of careful thought", it was supporting the council's position.

It was my opinion, based on the evidence of pump tests that lent credence to the complainants' contention, that they should be reimbursed for the full cost of extending their well, and I made a recommendation to that effect to the Minister of Municipal Affairs. He agreed to overrule the decision of the Improvement District Advisory Council, and an ex gratia payment of $2,700 was issued to the complainants to cover the cost of their well extension.

## PERSONNEL ADMINISTRATION OFFICE

The only complaint against the Personnel Administration Office was declined as being beyond our jurisdiction.

## DEPARTMENT OF PUBLIC WORKS, SUPPLY AND SERVICES

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Public Works, Supply and Services** | 2 | 0 | 0 | 6 | 8 |

**Case summary 22**

### A most bewaring buyer

The complainant was a realtor who owned a piece of land in the Restricted Development Area around the city of Edmonton. In 1981 he contacted the Restricted Land Use Branch of the Department of the Environment and offered to sell the property to them for $195,000. An appraisal by the department placed the value of the land at $150,000, and they declined to accept the offer. In subsequent years, as property values dropped, the complainant made other offers to sell his land to the department, but appraisals by the department's realty division (which was later transferred to the control of the Department of Public Works, Supply and Services) were consistently much lower than the complainant's asking price.

Finally the complainant registered a protest with our office to the effect that the realty division had not been bargaining with him in good faith. He cited the fact that a neighbouring property had been sold to the division for over a million dollars in 1981 at a time when the division had informed the complainant that his own price, based on a similar method of appraisal, was much too high. However, it became clear to us upon investigation that negotiations on the neighbouring property had been underway since 1979, when land values were at their peak.

We also determined that it was well-established government policy that the realty division could purchase property at a fair current market price asked by a vendor but did not have the authority to make counter offers; hence it was the responsibility of a property owner to ask an amount based on an uninflated appraisal. The complainant was adamant that the appraisers used by the realty division of Public Works were in the hip pocket of the government. It appeared to me that, on the contrary, the realty division had been following sound practices in a fair manner, that the complainant was holding out for more money than his property was worth, and that his complaint had no justification.

## DEPARTMENT OF RECREATION AND PARKS

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Recreation and Parks** | 1 | 2 | 0 | 4 | 7 |

**Case summary 23**

### Low bid loses out

A trucking firm put in the lowest bid on a contract to construct and develop campsites in a recreational area. The Fish and Game Association that was in charge of the government-funded project let out the contract to another company that had submitted a slightly higher bid. The manager of the unsuccessful firm complained of lack of accountability in the control of funding of the project by the department.

The department had provided a grant of $100,000 to the local improvement district for the project, and the improvement district had entered into a contract with the Fish and Game Association for completion of the project and maintenance of the area. Inquiries by my staff revealed that the improvement district was providing the department with reports of progress and of dispensation of funds and that this procedure was considered sufficient for the purposes of the department. The department and improvement district indicated complete satisfaction with the construction and maintenance of the recreational area by the Fish and Game Association, but did not wish to comment on the tendering process as they were not directly involved. It was shown to be accepted departmental policy that improvement district offices monitor community projects but do not audit societies' or associations' management of projects.

Further investigation on our part revealed that the Fish and Game Association had accepted a slightly higher bid than the complainant's on the basis that the successful bidder, unlike the complainant, had been able to provide a completion date, which was deemed an important enough consideration to sway the balance. The procedures followed appeared to be reasonable and in accordance with established departmental practice, and I was unable to support the complaint.

## ALBERTA RESEARCH COUNCIL

Only one complaint was received against the Alberta Research Council. It was investigated but not sustained.

## DEPARTMENT OF SOCIAL SERVICES AND COMMUNITY HEALTH

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Social Services and Community Health | 57 | 16 | 2 | 41 | 116 |
| Alcoholism and Drug Abuse Commission | 0 | 0 | 0 | 1 | 1 |
| **Total Social Services and Community Health** | **57** | **16** | **2** | **42** | **117** |

Termination of social allowance benefits was the single most prevalent subject of complaint against the Department of Social Services and Community Health. Many other complaints were directed at the Vital Statistics Branch, Child Welfare and the Assured Income for the Severely Handicapped (AISH) program. A considerable number of complaints against the department were declined because complainants had not known about or resorted to existing appeal mechanisms, most notably the Citizens' Appeal Committees.

A group of complaints about social allowance benefits and the AISH program were generated by an apparent tightening of the department's financial belt, leading to more rigid control of criteria of eligibility and provision of discretionary benefits. Circumstances that three or four years ago might have been considered borderline but eligible for assistance were far less likely to receive the benefit of the doubt in 1984. Although this shift in approach was a source of concern to many clientele of the department, funding decisions by departmental personnel were generally found to be in accord with the legislation and policy guidelines and to be reasonable in that light.

The administrative shortcoming that most concerned my office in 1984 had to do with the training and expectations of service delivery personnel, especially district office unit supervisors in the areas of social allowances and child welfare delivery. These individuals are in the difficult position of forming the link between management and line staff, and they are quite possibly the most important cog in the service delivery process. Their tasks require considerable expertise, yet far too frequently the position is accorded insufficient authority and little respect. Consequently there is a tendency for these individuals to take their responsibility lightly and to respond to requests for assistance with comments such as "I'm too busy" or "I can't be expected to know what's going on in every case". Such responses are understandable in view of the level of job frustration, but not acceptable given their supervisory roles. It is crucial for the efficient delivery of social services that office supervisors be aware of vital information and see that it is channelled on to the next administrative level in order that sensitive situations are dealt with appropriately and quickly.

The majority of complaints against the Vital Statistics Branch seem to arise when the immediate needs of people are overlooked in the passion for paper shuffling. However, I have found the manager and director of the branch to be highly approachable and prepared to assist clients whenever possible. In this manner the accountability factor is being dealt with effectively by the next level in the system, and I would therefore suggest that the Vital Statistics Branch is operating with efficiency, given the volume of cases it is dealing with.

The issue of accountability requires more attention in the areas of the Department of Social Services and Community Health where there is immediate contact between departmental staff and the public, as indicated by my earlier comments on personnel at the supervisory level. The whole process of operations auditing in the department could stand to be improved. Failure to conduct ongoing assessments of strengths both of the system and of each individual inevitably leads to crisis management. It might prove beneficial for Social Services administrators to look at an extensive audit system such as that employed by the Correctional Services Branch of the Department of the Solicitor General. A well-defined operations audit system could be a source of greatly increased efficiency in areas such as the Social Allowance Program and the Child Welfare Branch and would help to define for employees what information they should be providing, to whom and when. A number of our files have identified shortcomings in this area.

Because the Department of Social Services and Community Health is large and diverse with an emphasis on people-oriented programs, in the long term it is bound to be more prone to breakdowns in administrative procedure and quality control than less complex departments. While some of these may never be corrected entirely, it is my belief that a major step towards more efficient procedures may be effected by providing supervisors with better support and by clarifying the expectations demanded of them and holding them accountable. An operations audit system, while placing greater demands on staff, has the capacity to encourage a more efficient handling of caseloads while at the same time minimizing the all too frequent occurrences of social workers being left to deal with difficult situations without proper direction. I believe a coordinated effort to implement these improvements in the department to be essential.

**Case summary 24**

*Lapses in efficiency are more likely to occur when the responsibilities of vacationing employees are transferred temporarily to their colleagues. The onus of ensuring a continuation of responsible care in their absence is especially critical among social workers who are the primary contact for separated families.*

### Loose reins on a runaway

The parents of an adolescent girl complained about the actions of the department relating to the custody of their daughter, who had been made a temporary ward of the court and placed in a receiving home after being declared out of control. A few days after her arrival in the home she requested permission to go camping with a woman friend. In the absence of the worker responsible for the case, permission was granted by a backup worker after a cursory investigation of the nature of the trip, which turned out to be in the company of a much older boyfriend.

Soon after the girl had been placed in a new receiving home, the social worker in charge transferred the case to another worker. Both workers went on summer holidays at the same time, and while they were gone the girl ran away. The receiving home notified a departmental backup worker who neglected to inform either her supervisor or the parents of the girl's absence. No action to apprehend her was taken until she had been missing four days, when her social worker returned from vacation and secured police involvement. The girl was brought home from an out-of-province city, and the court subsequently ordered compulsory care in a detention home.

I was prepared to accept the department's contention that it did not have sufficient grounds to place the girl in a secure setting at an earlier stage. Nevertheless, it was apparent that serious breaches of departmental procedure had taken place. First was the failure of the backup social worker to thoroughly assess the circumstances before giving the girl permission to go camping almost immediately after she had been declared out of control. Secondly, the other backup worker had a clear duty to inform the parents and her supervisor when the girl disappeared so that apprehension procedures could be initiated. Significantly, each of these failings occurred in the absence of the social worker in charge, and in neither case was the backup worker's knowledge or action communicated to a supervisor.

The deputy minister agreed with my concerns and implemented action to make the repetition of such procedural breaches less likely. Workers in the department were reminded of the extreme importance of making a thorough assessment of each set of circumstances requiring a decision and of promptly communicating significant developments in cases to supervisors and parents to ensure prompt action.

**Case summary 25**

### An overzealous district office

The complainant and his wife, who were both recipients of social allowance benefits, moved to an area under the jurisdiction of a district office that required each of them to produce evidence of ninety job searches a month. The district office with which they had previously been dealing had called for ten job searches a month. The complainant thought the new requirement rather excessive considering he and his wife had an infant child and had been instructed to take bus fare out of their food allowance. He also questioned the discrepancy in policy between different offices of the same department.

We notified the Deputy Minister of Social Services, who agreed that the requirement was excessive and instructed the district office to alter its policy. The district office revised the total number of job searches required of the couple to between forty and sixty, in order that one member could care for the infant while the other was job-hunting.

**Case summary 26**

## An ill-founded criticism

The complainant, formerly a consultant with the Department of Social Services and Community Health, approached this office requesting that we review the circumstances involved in an incident that was documented on his final performance appraisal. He had left the department's employ on his own volition as a result of the frustration he had experienced in attempting to have the issue settled internally.

The complainant maintained that he had been wrongfully accused of misleading a community group into believing that their application for a government grant to conduct a needs survey would be successful. He had been unable to convince his superiors that the allegations were untrue, despite his having obtained a written statement to that effect from the community group.

Our investigation revealed that senior officials in the department believed that the complainant's communication with the group had resulted in a political embarrassment to the Minister of Social Services that influenced him to authorize the grant after it was initially refused. However, our interviews with members of the group made it clear that, contrary to the department's position, the complainant had told the group from the very beginning that they were unlikely to receive funding.

We also disagreed with the department's claim that the complainant ought to be criticized for having indicated to the community organization that it could appeal the rejection of its application to the minister. The deputy minister was reminded of the entitlement of every citizen to know his right of appeal and how to initiate it.

The final issue we examined dealt with whether the complainant had been given a reasonable opportunity to present his case to the department and whether the department had done an adequate enough investigation to have entered its criticism on the complainant's performance appraisal. It was discovered that the department had not taken any punitive measures against the complainant because of the incident in question; nor had his performance appraisal been downgraded. Nevertheless, we concluded that the department should have been more assiduous in checking the facts that led to its negative comments about the complainant.

Although the complaint was held to be justified, it was decided not to seek a removal of the comments from the performance appraisal, as neither had the complainant been disciplined nor had his overall evaluation been downgraded. Instead, the department was asked to and agreed to place on the complainant's personnel file a copy of my closing report to the Deputy Minister of Social Services.

## DEPARTMENT OF THE SOLICITOR GENERAL

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Solicitor General | 3 | 0 | 0 | 4 | 7 |
| Correctional Services | 91 | 14 | 4 | 82 | 191 |
| Liquor Control Board | 4 | 0 | 0 | 2 | 6 |
| Motor Vehicles Division | 3 | 1 | 0 | 7 | 11 |
| **Total Solicitor General** | **101** | **15** | **4** | **95** | **215** |

The Solicitor General's department administers the corrections system in the province insofar as it has authority over provincial correctional centres. Under the umbrella of legislative direction and policies developed from legislative authority, the department's administrators have a substantial discretion in the decision-making process affecting inmates. The manner in which the system is administered determines not only whether the system is fair and seen to be fair, but also whether it is perceived to be harsh and arbitrary.

Complaints against Correctional Services constitute the single largest caseload processed by my office—almost 20 percent of the 1984 total. However, almost half of these were declined outright. Very few complaints against the branch can be supported on the basis of failure to treat inmates fairly. Many of the complaints relate to transfers to other correctional centres, in particular to the Peace River Correctional Centre. Some complainants are upset about moves to administrative confinement units, in which inmates are kept in individual cells with limited privileges because of their behavioural problems in the general prison population. Other inmates claim that they have been wrongly found guilty by a disciplinary board and/or that the punishment imposed is excessive.

In the normal course of daily events inside prison walls, administrators have to make many decisions that are unpopular with inmates, taking into account the department's legitimate interest in maintaining the good order, internal management and security of a correctional centre, the legitimate needs of inmates and the safety of the community. It is often difficult to make decisions that are based on a variety of subtle factors, and it is always easy to criticize after the fact. Few who live or work outside the corrections system have much awareness of the inherent tensions that exist in any prison population. Ultimately, no one knows that population better than the experienced administrators who are entrusted with the responsibility of administration.

Bearing this in mind, it is essential that one such as the Ombudsman who is given the authority to investigate and review decisions of prison administrators acknowledge the importance of the latitude granted to such administrators to exercise discretion. For example, it is sometimes necessary to transfer inmates to other centres because of overcrowding if order and security are to be maintained. Some inmates inevitably protest such changes, often on the ground that no consideration has been given to their special needs such as proximity to relatives or availability of special courses. When making transfers, the department does take into account such factors as security rating, visits, the potential of approval for temporary absences, and institutional behaviour, and does not randomly select inmates for moves.

In many cases inmates are moved to administrative confinement because of information that comes to the attention of officers that "something is going down" or an inmate is "strong-arming" other inmates. An

inmate will then complain to me that he has been moved into confinement only as a result of suspicion. While this may be true, and even taking into account any duty to be fair, it is also true that not to move the inmate into the administrative confinement unit for a cooling-off period may endanger the security of the centre.

Complaints are often received about excessive punishment imposed by a disciplinary board. Inmates are required to abide by a correctional centre's rules as well as the general regulations, and the legislation provides a process for administratively charging an inmate who does not comply with those rules and for imposing a punishment at the discretion of the disciplinary board. Such a punishment must be appealed to the director of the centre before a complaint is made to me. Where the rules and regulations are reasonable and the penalty is not excessive, the discretion as to punishment should remain with the board and the director. The question of sufficient evidence to support the charge is, again, one best left to the board members and the director, since these are the people most familiar with the circumstances.

The corrections system is by no means perfect, and there are occasions when an outside review is helpful. The willingness the department has shown to accept outside reviews and the spirit of cooperation demonstrated by its administrators in implementing suggestions are indicative of the wish not only to be fair but also to be perceived as fair. It is particularly noticeable, as the system progresses, that the necessity of formally investigating many complaints is frequently obviated by the efforts of administrators to provide explanations to inmates to why they are being affected in a certain manner and to make attempts to resolve informally many concerns. In that regard, an inmate is no different from anyone else; as long as he is told and understands the reason for a decision affecting him, he can usually live with it.

**Case summary 27**

### Right to a fair hearing guaranteed

The three complainants had been inmates together at a provincial correctional centre, where they had been placed in what they believed to be a special handling unit and had assaulted a number of other inmates in order to be removed from it. The next day they were removed to the Calgary Remand Centre, where they were informed that they were to spend fourteen days in the disciplinary segregation unit as a punishment imposed by a disciplinary board at the correctional centre. They complained to our office that none of them had appeared before a disciplinary board in relation to any charge arising from their confinement.

Our investigation revealed that their allegations were correct and that because the complainants had not been afforded the opportunity to present themselves before the disciplinary board, the duty to act fairly in administrative matters had not been met. A policy directive in force at the correctional centre indicated that the board could hold a hearing in the absence of an inmate if the inmate refuses to appear or cannot be brought to the hearing without the use of force. It appeared that the officials concerned had made a prejudgment that the inmates would fall into the category defined in the directive. Nevertheless, an analysis of the relevant case law clearly showed that the board had a duty to adhere to the provisions of natural justice, which meant that the accused had to be made aware of the allegations against them, be informed of the evidence, and be given a chance to respond to the evidence in person and to question any witness.

I expressed my concerns to the department, and the department agreed to revise its policy directive to read that an inmate's right to attend a hearing would be revoked only "where the inmate is disruptive in the actual hearing, refuses to attend, or refuses to act in an appropriate manner immediately prior to the hearing". Because the complainants had openly admitted their unprovoked assault on the other inmates, no recommendation was made on their behalf regarding the disciplinary action accorded to them.

**Case summary 28**

*The Ombudsman does not often question the judgment of jail administrators making decisions about requests from inmates for transfers or absences. The administrators have both the experience and the day-to-day contact with the inmate population that is generally required for sound decision-making. The Ombudsman merely considers whether reasons for refusal of an application are adequate and not arbitrary and whether the information relied upon was correct and complete. The following case exemplifies the type of unusual circumstance where the Ombudsman encourages prison officials to reconsider such a decision.*

### Released on compassionate grounds

Relatives of an elderly farmer who was doing time for the attempted murder of his wife sought help from us in obtaining an early release for the prisoner because of his age and serious medical problems including a kidney transplant. The man's formal application for prerelease to his daughter's home had been denied by prison authorities on the grounds that adequate medical care was available at the jail. They were also concerned that the prisoner, if released, might try to harm his estranged wife again.

After we became aware of a professional psychological assessment that suggested the man was unlikely to be harmful to anyone, and in view of earlier temporary absences during which the inmate had shown exemplary behaviour, the department was asked to reconsider its refusal of the prerelease application. Clearly this case was not an ordinary case and called for a compassionate second look. As a result of the administrator's reassessment, the man was prereleased to his daughter's home to serve the balance of his time under her supervision.

**Case summary 29**

### Cash shortage costs job

The complainant was a casual employee of a government liquor store. At the end of a shift as cashier, he was three dollars short in his cash total and was asked to pay the difference out of his pocket, in accordance with the policy of the Alberta Liquor Control Board. The complainant disagreed with the policy and refused to comply. The store assistant manager told him to pay up or he'd be fired, and the promise was carried out when the complainant stuck by his refusal. When he went to pick up his final paycheque he was told the cheque would be withheld unless he paid the three dollars. He continued to refuse to do so, and the cheque was returned to head office, where it was reduced by three dollars and stamped "for cashier shortage". The complainant approached his union, which told him nothing could be done to recover the money from his cheque. He did not dispute the right of the board to institute the cashier policy or to fire him, but he maintained that, once having taken that course of action, the board had no authority to exact further retribution from him without his consent.

At the time of the complainant's firing, the cashier policy requiring employee repayment of shortages between a dollar fifty and ten dollars had been implemented with full agreement between the board and the union, but the terms of the policy were not embodied in the collective agreement until after the complainant had been dismissed. At the time of the incident the operations of the Liquor Control Board were required to conform with the provisions of the Employment Standards Act. Section 20 of that Act allowed an employer to deduct from the "wages, overtime pay or entitlements of an employee a sum of money that is . . . personally authorized in writing by the employee or authorized by a collective agreement that is binding on the employee to be deducted". The wording of the Act raised the question of whether it is sufficient to have a provision in a collective agreeement providing for payment by the employee of cashier shortages, or whether the agreement must go further and authorize the sum to be deducted from the employee's wages.

Since the board agreed it was bound by the provisions of the Employment Standards Act at the time the complainant was dismissed, I decided that it was appropriate to discontinue investigation of the complaint and refer the

complainant to the Employment Standards Branch for a determination of whether or not the deduction in question was legally made. This was done, and ultimately the Employment Standards Branch arranged for the complainant to receive a refund of his three dollars.

**Case summary 30**

### Wrecked truck, wrecked business

The complainant was the owner of a tractor trailer rig that was damaged in collision with another vehicle. As the complainant considered the other driver to be totally at fault, he sued. Believing the other driver to be uninsured, the complainant made an application for compensation to the Motor Vehicle Accident Claims Fund, but it was denied on the basis that the fund could only provide compensation in cases where the other driver was proven to be without insurance. The other driver, however, was meanwhile commencing an action against his own insurance company, which maintained he had been uninsured at the time of the accident.

Because of the financial strain imposed on his business as a result of the accident, the complainant applied for relief from the Motor Vehicles Accident Claims Fund, but he was denied on the ground that the fund could only provide compensation in cases where the other driver was clearly uninsured. The complainant feared that his business would fail if help was not forthcoming, and appealed to us for a resolution of the matter. Our investigation revealed that the fund had no authority to make any payments until it was legally determined that the other driver had been uninsured, and consequently the complaint could not be sustained.

## DEPARTMENT OF TOURISM AND SMALL BUSINESS

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Tourism and Small Business | 0 | 0 | 0 | 0 | 0 |
| Alberta Opportunity Company | 2 | 0 | 0 | 2 | 4 |
| Small Business and Farm Interest Shielding Branch | 0 | 0 | 0 | 1 | 1 |
| **Total Tourism and Small Business** | **2** | **0** | **0** | **3** | **5** |

## DEPARTMENT OF TRANSPORTATION

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Transportation** | **4** | **3** | **0** | **6** | **13** |

The majority of complaints received against the Department of Transportation related to financial claims against the department as a result of alleged damages occurring during highway construction. The Regional Transportation Division, the Assistant Deputy Minister in charge and his Regional Directors have been quick to respond to injustices and have cooperated fully in helping to resolve problems even before definite responsibility has been established.

**Case summary 31**

### Passing the buck, but not a thousand

The complainant was employed by the Department of Transportation for approximately five years. At the time he resigned his position in order to pursue a degree at a community college, contract negotiations were underway between the government and the Alberta Union of Provincial Employees. Six months later an arbitration award was handed down that would have entitled the complainant to about a thousand dollars in retroactive pay. The regulations stated that any terminated employee who wished to receive retroactive pay had to apply for it within sixty days of the effective date of the award. When he later heard that the contract had been settled, the complainant immediately wrote to the personnel office requesting the amount due to him. As he received no reply, he telephoned the office and was told that he had missed the deadline and was out of luck.

The next step the complainant took was to seek the assistance of the union in obtaining his money. He was told that union regulations prohibited it from performing services for persons who were no longer employees.

The complainant thought he was being deprived of the benefits of the contract through no fault of his own and complained to this office. We contacted the department, which took the position that it had no responsibility to contact a former employee in order that he could make the required request for his money. Nevertheless, it was clear to us that the complainant had earned the amount and had no way of knowing of any restrictions on his right to it. My office therefore made a recommendation to the minister that the complainant receive an ex gratia payment covering his retroactive entitlement. The minister concurred with the recommendation, and the matter was settled to the complainant's satisfaction.

## ALBERTA TREASURY

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Treasury | 6 | 1 | 0 | 2 | 9 |
| Treasury Branches | 4 | 1 | 0 | 1 | 6 |
| Public Service Pension Administration | 3 | 0 | 0 | 1 | 4 |
| **Total Treasury** | **13** | **2** | **0** | **4** | **19** |

**Case summary 32**

## CBC not public body, says pension board

A complainant against the Universities Academic Pension Board was received concerning a decision of the board to deny time worked with the Canadian Broadcasting Corporation as pensionable service.

In 1978 a new Universities Academic Pension Plan came into effect. All eligible persons were notified of the change, and reference was made to the possibility of being able to pick up previous service with a public body in Canada as pensionable service. The complainant made application to have previous service with the CBC counted as pensionable service. The application was accepted and payments for the previous service commenced. After making payments for over two years, during which time she increased her payments in anticipation of early retirement, the complainant contacted the Payroll and Pensions Branch of Treasury to ascertain the balance of the amount owing. She was advised that an error had been made when the original application had been accepted, as board policy was clear that public bodies in competition with private enterprise were not considered to be public bodies for the purposes of the agreement. Therefore time spent with the CBC was not considered to be eligible for pensionable service, and moneys already paid by the complainant would be refunded.

The complainant appealed this ruling to the Universities Academic Pension Board, which upheld the ruling but provided the complainant with a rate of interest on the moneys she had deposited with Payroll and Pensions at the average of the one-year term deposit rate as determined by the major chartered banks.

Our investigation revealed that the CBC did not have a reciprocal agreement with the Universities Academic Pension Plan and had never been approved as a public body by the Universities Academic Pension Board. The oversight had been a clerical error on the part of Payroll and Pensions, and the recommendation by the Pension Board to pay a higher rate of interest than normally provided was the only way the board could assist the complainant.

We were unable to support the complainant in this case but were pleased to note that the Universities Academic Pension Board had recognized the error and provided some assistance to the complainant.

**Case summary 33**

*Natural justice requires that a person being offered a contract have an opportunity to be informed of its provisions, even when the contractor is a bank.*

## The teller who didn't tell all

The complainant went to her Treasury Branch to inquire about depositing $5,000 in a term deposit. The teller asked her whether she had considered taking out a guaranteed investment certificate instead. The complainant said she knew nothing about either term deposits or GICs, and asked the teller to explain the difference. The teller said the GIC couldn't be cashed in ahead of time but the interest rate on it was higher, and on this basis the complainant chose a GIC that was locked in for five years. During the following days she learned that there were other differences between the two types of deposit that the teller hadn't told her about, such as that the interest rate could fluctuate significantly on a term deposit but was fixed on a GIC. With this new information she returned to the bank for clarification and sought to transfer her money to a 30-day term deposit. The request was denied by both the manager of the branch and the manager of the head office, as the transaction had already gone through.

In submitting her case to our office, the complainant argued that her consent to invest in a GIC had not been informed, as pertinent information had been withheld from her. We approached the Superintendent of the Treasury Branch and advised him of the circumstances. He agreed that there seemed to have been "a breakdown in communications" between the complainant and the staff of Treasury Branch, and ordered that the regulations be waived and that the complainant be allowed to redeem her guaranteed investment certificate.

## DEPARTMENT OF UTILITIES AND COMMUNICATIONS

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Utilities and Telecommunications | 2 | 0 | 0 | 1 | 3 |
| Alberta Government Telephones | 7 | 2 | 0 | 4 | 13 |
| **Total Utilities and Telecommunications** | **9** | **2** | **0** | **5** | **16** |

**Case summary 34**

*Government utility monopolies that are frequently subject to bad accounts establish strict regulations in regard to their customers. However, their eagerness to protect their own interests sometimes leads to practices that go beyond reasonable bounds. In the following case Alberta Government Telephones was most cooperative in reviewing and withdrawing an excessively onerous requirement.*

### That long-distance feeling

When the complainant moved to Alberta and had a telephone installed, she paid the $100 deposit required by Alberta Government Telephones and settled her bills promptly. Her altercation with the phone company arose when third party long-distance calls by unknown persons were billed to her account. Without sending her the bill, AGT requested an additional $200 deposit and told her that her phone would be disconnected if she didn't pay it immediately. She considered this unreasonable in view of her exemplary record in paying bills and complained to company employees, but she found that not only would they not accept her explanation that she knew nothing of the third party calls, but they were rude to her as well. In frustration, she appealed to us for assistance.

AGT explained to us that its request for an extra deposit was based on prebilling information that use of her telephone was increasing beyond the anticipated amount, and said that its demand for payment was normal procedure. However, in reviewing the circumstances in this case the corporation agreed it had been a little precipitous in leaning on the complainant. It returned her $200 to her and issued a directive to all its business offices that additional deposits would not be required in advance of billing except in the case of customers who demonstrate an inability to pay their accounts.

## DEPARTMENT OF WORKERS' HEALTH, SAFETY AND COMPENSATION

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| Workers' Health, Safety and Compensation | 2 | 0 | 0 | 0 | 2 |
| Workers' Compensation Board | 62 | 15 | 0 | 52 | 129 |
| **Total Workers' Health, Safety and Compensation** | **64** | **15** | **0** | **52** | **131** |

Of all provincial departments and agencies, the Workers' Compensation Board is second only to the Correctional Services Branch in the number of complaints generated against it. The majority of complaints have to do with back problems, and the most frequent object of

complainants' sense of aggrievement is lack of adequate or continuing compensation by the board for injuries sustained on the job.

One problem that can create an impasse between the board and its clients is the difficulty of proving the extent of a disability. This difficulty is compounded when debilitating pain is involved. Often the situation occurs where the board stops paying compensation for an injury when there is no longer any tangible medical evidence that it is preventing the subject from working, yet the person claims that continued pain and suffering preclude the possibility of employment. It is the policy of the board that in the absence of medical proof of disability, it will deny a worker compensation. The Catch 22 is that there appears to be no acceptable medical technique of measuring pain or the difference in "pain thresholds" among different people. One medical specialist with many years' experience treating persons suffering pain commented to this office that nowhere in the world has there been any significant research done specifically on pain and suffering; hence the difficulty of establishing any standard of measurement.

In an effort to deal with the administrative dilemma caused by claims based on pain, about two years ago the WCB established a pain clinic in the Vocational Recreational Centre. A team of professionals who specialized in the treatment of pain worked with individuals referred to them by the board, and some success was noted in the treatment of sufferers of chronic pain. However, the board eventually came to the conclusion that funds allocated to the clinic ultimately benefited only a few persons and could be better put to use elsewhere, and the clinic was closed. This decision was encouraged by suggestions that a pain clinic should not be directly associated with the WCB because there was a tendency for clients to believe that the board was in some way attempting to ease its way out of making payments to them.

For a time chronic patients were referred to a clinic in another province, and when a pain clinic was established at the Calgary Foothills Hospital the board began referring clients there. It has been doing so since. Unfortunately this clinic, staffed by only two workers, suffers under a staggering caseload that consists not only of WCB referrals but of patients from many other sources as well. As a result, injured workers who are sent there are often faced with long delays in their treatment.

In the absence of any meaningful standard for determining the degree of debilitation caused to workers by pain, it appears that it will continue indefinitely to be a source of frustration and delay in Workers' Compensation Board cases and, consequently, a recurring catalyst for complaints to the Ombudsman.

**Case summary 35**

### Seven years' bad back

A nursing attendant sprained her lower back lifting a patient. After being treated with physiotherapy, she returned to work six months after the accident, but when her condition became aggravated she was discharged by her employer as being unable to continue her work. Shortly afterwards, the Workers' Compensation Board, on the strength of its physicians' reports that there was no clinical evidence of any remaining abnormality, pronounced her fit for employment and ceased making payments to her. She said she felt unable to work because of constant back pain in practically any posture. An orthopaedic surgeon who examined her explained that there was really nothing that could be done—he had "no magic wand", as he put it—and suggested she should lose some weight to help alleviate the pain.

She appealed the WCB decision to the Claims Services Review Committee, which upheld the decision but agreed to sponsor vocational rehabilitation counselling for sedentary work such as typing. Subsequent appeals to members of the board were equally unsuccessful in the absence of acceptable medical evidence of continuing disability. "It is recognized that you may have pain," the board told her, "but the doctors have been unable to find a reason for this pain." They advised her that her only remaining recourse was to appeal to the Ombudsman, which she did. By this time her dealings with the Workers' Compensation Board had been going for seven years.

Initially I was unable to support the complainant because of the insistence of the board that its hands were tied in the absence of clinical medical evidence that would prove her previous claim to the WCB had not been properly assessed. Eventually the complainant was able to provide us with a new letter from her family doctor saying that he considered her to be suffering from chronic low back pain resulting from her work-related accident. On the basis of this letter the board announced that it was prepared to accept the fact that the complainant's injury had aggravated her back condition to the point where she couldn't return to work, and authorized payment of a lifetime disability pension and a supplementary allowance to increase her monthly income to the equivalent of full compensation benefits.

**Case summary 36**

### WCB offer aggravated his headache

A carpenter who suffered a fall at work was plagued for years afterwards with headaches and hearing difficulty. Four years after the accident the Workers' Compensation Board told him they considered him fit for employment and would not assume any further responsibility for his situation. Because of the evidence of continuing ear damage the board offered him a choice of a lump sum settlement for his partial disability or a small monthly pension. Faced with what seemed to him like an impossible decision, he approached our office in a greatly agitated state to appeal for assistance. He said that in his unemployed state the monthly payment of $30 was far too small to support himself and his family, but he believed that if he accepted the lump sum payment of $4,000 he would sacrifice any future consideration of claim if his condition should worsen over time. My staff was able to assure the complainant that he would not lose any rights to further compensation by accepting the lump sum, and he was accompanied to the offices of the board, where he received further reassurance and was given a cheque for the full amount, much to his relief.

## OFFICERS OF THE LEGISLATIVE ASSEMBLY

| | Declined / discontinued | Sustained: assistance provided | Sustained: no assistance possible | Not sustained | Total |
|---|---|---|---|---|---|
| **Officers of the Legislative Assembly** | 1 | 0 | 0 | 1 | 2 |

**Case summary 37**

### Inconvenient, but not undemocratic

A voter complained that a polling station had been shut down by the returning officer in the 1982 provincial election, and that as a result he had to travel miles to vote instead of going next door. Until that time the station had been in use in every election since 1935. The complainant said that it was his basic democratic right to have a polling station in his own community.

The Chief Electoral Officer explained to us that the poll had been closed in accordance with government policy that all polls be held in community facilities instead of private residences. As there was no school, post office, store, church or community hall in the complainant's community, the polling station had been incorporated with another one in a nearby village. I agreed with the complainant that the transfer of the polling station was inconvenient to him, but could not support his contention that his right to vote had been affected. The neighbouring polling station was within reasonable access, and the policy on which the returning officer's decision had been based could not be seen to be unsound. The complaint was not sustained.

**Case summary 38**

### Deadlock over expropriation

In the 1960s the complainant bought an abandoned schoolhouse next to a provincial highway and applied for a permit to build a dance hall on the property. The permit was denied by the Department of Highways as its regulations specified that only highway commercial enterprises such as motels and service stations could be approved. Instead the department offered to purchase the land, anticipating that it would be needed later on for road development. The complainant declined. She appealed to the Ombudsman, as she thought that her application for a permit had been unfairly denied and that the department should base its offer to purchase on commercial rather than residential values. The department countered that such an argument was not reasonable, as the property could not be developed commercially. The complainant held firm, explaining that God had told her in a dream that she would sell the land at a much higher price than the department was offering.

While the case was under investigation, the Highways department decided that because of the stalemate in negotiations with the complainant it would begin expropriation proceedings. At this point the complainant took her case directly to the Premier of the province. Because another avenue of appeal had thus been opened, the Ombudsman concluded that it would be inappropriate for his office to continue its involvement, and the file was closed.

In 1984, after many years of endeavouring to obtain a settlement she considered fair, the woman again came to this office about the matter, but this time she included the Ombudsman in her cause of complaint. She said that she had discovered that the Ombudsman in office at the time of her earlier complaint had asked the government to expropriate her property so that he wouldn't have to make a decision. She maintained that she had thus been dealt "a crucial blow", and asked to have the wrong redressed.

The complainant was reminded of the circumstances under which the earlier investigation had been carried out and concluded. We clarified for her the fact that the Department of Highways had initiated expropriation proceedings without any representation from the Ombudsman. Because the subject of the complaint was well over a decade old with no communication from the complainant in the interim, we concluded it would be inappropriate to reopen the investigation, and the complaint was declined.

## REQUESTS FOR ASSISTANCE

A considerable number of people contact us to request general assistance with their problems. Typical issues that cause concern are building permits, penalties for municipal tax arrears, the actions of local police and school boards, unemployment insurance, income tax, consumer issues, and urea formaldehyde insulation in homes. Other problems are unique, such as that of the complainant who was upset by the musical offerings of the legislature carillon. None of the foregoing are within the jurisdiction of the office, but we make every effort to assist by referring such complainants to the most appropriate municipal, federal, provincial or private resource that can offer assistance.

Other people call about matters within our jurisdiction that could lead to formal investigations but can often be resolved informally by us with a phone call or two or simply by listening to a caller's concerns and working out possible solutions together. Sometimes, as in the following case, a caller has no specific complaint but faces general difficulties.

**Case summary 39**

### Freedom no bed of roses

When the complainant was released after completing a jail sentence, he was beset by creditors with long memories and short patiences and had no money with which to appease them. To make matters worse, the Motor Vehicles Division had sent him a notice suspending his driver's licence for a year longer than its own regulations stipulated. He approached us for advice on how to start dealing with his problems.

My staff referred him to the financial counselling service provided by the Department of Consumer and Corporate Affairs and to the Department of Social Services and Community Health to determine his eligibility for social allowance. The Motor Vehicles Division was also contacted, and it agreed to remedy its obvious error by mailing out a new notice with the proper date attached.

**Case summary 40**

### Death certificate hard to obtain

An elderly widower sought to have U.S. Treasury bonds that he had co-owned with his wife transferred into his name and to persuade the U.S. Treasury department to stop sending pension cheques to his deceased wife. The Treasury department said it could not do so until her death and its cause could be proven by a certified death certificate signed by the doctor who had pronounced her dead. He approached the Vital Statistics Branch, which he said refused to give him a signed certificate or let him see it and instead produced an unsigned copy for a charge of $7. When this was declared unacceptable by the U.S. Treasury department, the man appealed to us. He was suspicious of Vital Statistics' refusal to meet his requests, and asked us to obtain a valid death certificate for him.

On behalf of the complainant we approached the administration and operations manager of Vital Statistics, who confirmed that the complainant, as the legal husband of the deceased, was entitled to a certified copy of the death certificate. It appeared from our discussion that there might well have been administrative shortcomings on the part of Vital Statistics staff, and suggested that we arrange to have the complainant contact him personally to straighten the matter out. This was done, and the complainant was duly provided with the copy he needed.

**Case summary 41**

*One of the frustrations sometimes experienced by complainants is insensitivity and a lack of courtesy on the part of public servants. This can be explained in part by the computerization of government services and*

*the large number of people to be dealt with, but it is an unfortunate indication of the depersonalization of bureaucratic involvement with citizens.*

### No reply from two departments

After her brother was killed in an accident, the complainant wrote from her home in another province to order three death certificates from the Vital Statistics Branch and sent in the required fee of $9. The certificates were issued with the name incorrectly spelled. Anxious to settle her brother's affairs, the complainant paid another fee for an application to amend the spelling in addition to the extra fee of $9 demanded for new certificates, and asked to be reimbursed for Vital Statistics' error. Vital Statistics said it had been the funeral director's error and that it was not at fault. The complainant maintained that Vital Statistics staff should have had the common sense to notice the discrepancy between the funeral director's spelling and her own. She again appealed for a refund but had received no reply after two months, so she sought our help. We contacted the director of Vital Statistics, who apologized to the complainant for the treatment she had received and reimbursed her for her additional expenses.

We later received a second request from the same woman relating to correspondence with the Alberta Health Care Insurance Division, to which she had mailed a cheque to cover the health premium of another relative killed in the same accident. Five months later the cheque had still not been cashed, and she received a bill for the premium from Alberta Health Care. She stopped payment on the cheque and sent a money order instead, asking that her payment be acknowledged immediately so that she would know it had reached its destination. She heard nothing for two months and contacted us, puzzled that Alberta Health Care had not had the courtesy to reply. We contacted Alberta Health Care, which explained that it was not its normal practice to advise its clients of the receipt of premium payments, as regular premium billings should indicate any amount owing. However, our investigation determined that both the cheque and the money order had been received and that consequently an overpayment had occurred. The division agreed to issue a refund to her.